



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
www.uspto.gov  
Washington, D.C. 20591-0001  
Telephone: 1-800-PTO-9199  
Fax: 1-800-872-9150

APPLICATION NO.	FILING DATE	FIRST NAME & MIDDLE INITIALS	SEARCH NUMBER	SEARCHER'S NAME
09/158,982	09/23/1998	BRIAN R. BULLARD	200623-127	J. S. J.

75-100 200623-127

RICHARD T. PERERSON, ESQ.  
KILPATRICK STOCKTON LLP.  
607 14TH STREET N.W.  
SUITE 1100  
WASHINGTON, DC 20005

EXAMINER
----------

MARSCHEL, ARDIN H.

ART UNIT	PAPER NUMBER
----------	--------------

163

DATE MAILED 12/03/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No <b>09/158,982</b>	Applicant(s) <b>Bullard et al.</b>	Examiner <b>Ardin Marschel</b>	Art Unit <b>1631</b>	
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --					
<b>Period for Reply</b> A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION <ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b)</li> </ul>					
<b>Status</b> <p>1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>Aug 28, 2001</u></p> <p>2a) <input checked="" type="checkbox"/> This action is <b>FINAL</b>.      2b) This action is non-final</p> <p>3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> 1835 C.D. 11, 453 O.G. 213.</p>					
<b>Disposition of Claims</b> <p>4) <input checked="" type="checkbox"/> Claim(s) <u>2, 3, 5-21, 23, and 24</u> is/are pending in the application</p> <p>4a) Of the above, claim(s) _____ is/are withdrawn from consideration</p> <p>5) <input checked="" type="checkbox"/> Claim(s) <u>3, 6-21, and 23</u> is/are allowed</p> <p>6) <input checked="" type="checkbox"/> Claim(s) <u>2, 5, and 24</u> is/are rejected</p> <p>7) Claim(s) _____ is/are objected to.</p> <p>8) Claims _____ are subject to restriction and/or election requirement.</p>					
<b>Application Papers</b> <p>9) The specification is objected to by the Examiner</p> <p>10) The drawing(s) filed on _____ is/are objected to by the Examiner</p> <p>11) The proposed drawing correction filed on _____ is a) approved b) disapproved</p> <p>12) The oath or declaration is objected to by the Examiner</p>					
<b>Priority under 35 U.S.C. § 119</b> <p>13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d)</p> <p>a) All b) Some* c) None of</p> <p>1 Certified copies of the priority documents have been received</p> <p>2 Certified copies of the priority documents have been received in Application No. _____</p> <p>3 Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a))</p>					
<p>*See the attached detailed Office action for a list of the certified copies not received</p> <p>14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e)</p>					
<b>Attachment(s)</b> <p>15) <input checked="" type="checkbox"/> Notice of References Cited PTO-890</p> <p>16) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review PTO-144</p> <p>17) Information Disclosure Statement(s) PTO-1440 Paper No. s _____</p> <p>18) Interview Summary PTO-413 Paper No. s _____</p> <p>19) Notice of Informal Patent Application PTO-152</p> <p>20) Other _____</p>					

Applicants' arguments, filed 8/28/01, have been fully considered and they are deemed to be persuasive to overcome previous rejections of record. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. Upon reconsideration, however, the following rejections and/or objections are newly applied. They constitute the complete set presently being applied to the instant application.

Applicants are hereby notified that the required timing for the correction of drawings has changed. See the last 6 lines on the sheet which is attached entitled "Attachment for PTO-948 (Rev. 03/01 or earlier)". Due to the above notification Applicants are required to submit drawing corrections within the time period set for responding to this Office action. Failure to respond to this requirement may result in abandonment of the instant application or a notice of a failure to fully respond to this Office action.

Applicants are also informed that the proposed drawings are approved by the Examiner as having basis in the priority document serial number 60/059,727. However, as noted above the Official Draftsman has indicated required corrections which must be submitted in response to this office action as also summarized above.

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this

## Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 2, 5, and 24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Farr et al. (P/N 5,811,231).

This rejection is reiterated and maintained from the previous office action, mailed 2/28/01. Applicants argue that the automated display of data as in Farr et al. would not be stored in a file. This is confusing as automated PCs, for example, are extremely well known to have their programs as well as data stored in files.

Yershov et al. is cited as of interest on the enclosed PTO Form 892, but cumulative to the above rejection, as disclosing a 3-dimensional genetic data on page 4915, Figure 2, as well as suggesting gene expression uses of a similar system and method on

page 4913, first column, first and second paragraphs.

Claims 3, 6-21, and 23 are allowed.

**THIS ACTION IS MADE FINAL.** Applicants are reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993) (See 37 CFR § 1.6(d)). The CM1 Fax Center number is either (703) 308-4242 or (703) 305-3014.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ardin Marschel, Ph.D., whose telephone number is (703) 308-3894. The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, Ph.D., can be reached on (703) 308-4028.

Any inquiry of a general nature or relating to the status of this application should be directed to Patent Analyst, Tina Plunkett, whose telephone number is (703) 305-3524 or to the Technical Center receptionist whose telephone number is (703) 308-0196.

November 30, 2001

ARDIN H MARSHEL  
PRIMARY EXAMINER